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[New York State Amends Power of Attorney Law](#)

On August 13, 2010, New York State Governor David Paterson signed into law amendments to New York's Power of Attorney Law ([A.8392-C/S.7288-A](#)) (the "2010 Amendments"). The 2010 Amendments become effective September 12, 2010 and will be retroactive to September 1, 2009, the effective date of the prior amendments to the New York State Power of Attorney Law that caused uncertainty and debate among transactional attorneys due to its onerous requirements and absence of a carve out for certain commercial transactions.

2009 Amendments

On September 1, 2009, amendments to [New York General Obligations Law \("NY-GOL"\) Section 5-1501](#) (the "2009 Amendments") went into effect regarding the statutory requirements of powers of attorney executed by individuals within the State of New York. Shortly thereafter, it became clear that significant problems and unintended consequences were created by many of its provisions. The 2009 Amendments imposed new disclosure and execution requirements aimed at reducing the risks of abuse and fraud in elderly care and the financial planning process. They required, among other things, the use of longer, more comprehensive power of attorney forms. However, the 2009 Amendments provided no exceptions for certain commercial transactions that often rely upon or involve the granting of a power of attorney, particularly powers of attorney executed in connection with shareholder proxies, real estate transactions, brokerage arrangements, Securities and Exchange Commission filings, state blue sky filings and tax forms. As a result, the New York State Bar Association created a Power of Attorney Working Group to study and report on the impact of the 2009 Amendments. The NYSBA Power of Attorney Working Group worked alongside the New York State legislature and its committees to craft the 2010 Amendments.

2010 Amendments

The 2010 Amendments clarify the ambiguities in the 2009 Amendments and alleviate certain onerous provisions, including:

- amending the definition of "principal" so that it only applies to individuals "acting for himself or herself, and not as a fiduciary or as an official of any legal, governmental or commercial entity, who executes a power of attorney;"

- eliminating the provision of the 2009 Amendments that created a presumption that the execution of a power of attorney revokes any prior powers of attorney executed by the principal;
- expressly providing that the execution of a power of attorney does not revoke any power of attorney previously executed by the principal;
- adding a provision that a power of attorney that complies with NY-GOL 5-1501 and is executed in another state or jurisdiction by a domiciliary of the State of New York is valid in the State of New York, and a power of attorney executed in the State of New York by a domiciliary of another state or jurisdiction in compliance with the law of that state or jurisdiction or the laws of the State of New York is valid in the State of New York.

In addition, the 2010 Amendments added NY-GOL Section 5-1501(c) which provided that the following powers are not "powers of attorney" under this law:

1. a power of attorney given primarily for a business or commercial purpose, including without limitation:
 - (a) a power to the extent it is coupled with an interest in the subject of the power;
 - (b) a power given to or for the benefit of a creditor in connection with a loan or other credit transaction;
 - (c) a power given to facilitate transfer or disposition of one or more specific stocks, bonds or other assets, whether real, personal, tangible or intangible;
2. a proxy or other delegation to exercise voting rights or management rights with respect to an entity;
3. a power created on a form prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose;
4. a power authorizing a third party to prepare, execute, deliver, submit and/or file a document or instrument with a government or governmental subdivision, agency or instrumentality or other third party;
5. a power authorizing a financial institution or employee of a financial institution to take action relating to an account in which the financial institution holds cash, securities, commodities or other financial assets on behalf of the person giving the power;

6. a power given by an individual who is or is seeking to become a director, officer, shareholder, employee, partner, limited partner, member, unit owner or manager of a corporation, partnership, limited liability company, condominium or other legal or commercial entity in his or her capacity as such;
7. a power contained in a partnership agreement, limited liability company operating agreement, declaration of trust, declaration of condominium, condominium bylaws, condominium offering plan or other agreement or instrument governing the internal affairs of an entity authorizing a director, officer, shareholder, employee, partner, limited partner, member, unit owner, manager or other person to take lawful action relating to such entity;
8. a power given to a condominium managing agent to take action in connection with the use, management and operation of a condominium unit;
9. a power given to a licensed real estate broker to take action in connection with a listing of real property, mortgage loan, lease or management agreement;
10. a power authorizing acceptance of service of process on behalf of the principal; and
11. a power created pursuant to authorization provided by a federal or state statute, other than this title, that specifically contemplates creation of the power, including without limitation a power to make health care decisions or decisions involving the disposition of remains.

The 2010 Amendments address the primary concerns of transactional attorneys advising clients in the shareholder proxy process, SEC filings, state blue sky filings and other commercial transactions by including the general exception for powers of attorney executed "primarily for a business or commercial purpose," as well as the more transaction-specific exceptions listed above. The retroactive effect of the 2010 Amendments means that so long as a power of attorney complies with the 2010 Amendments, it will be deemed valid and will not need to be re-executed even if it was improperly executed under the 2009 Amendments. Nevertheless, persons relying on a power of attorney in the State of New York should carefully review the amended New York State Power of Attorney Law to ensure that it complies with, or falls within a stated exception from, its provisions.

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